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DEC 14

MICHAEL RODAK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-292

MARRERO LAND AND IMPROVEMENT ASSOCIATION, LIMITED,

Petitioner,

versus

JEFFERSON PARISH SCHOOL BOARD,

Respondent.

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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ATTORNEY FOR RESPONDENT

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TO THE HONORABLES THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The Jefferson Parish School Board, respondent herein, opposes the petition for a writ of certiorari which was filed herein by Marrero Land and Improvement Association, Limited, petitioner herein, and respectfully urges that it be denied.

ARGUMENT

Based on great public need and on the opinion of the Court of Appeal, Fourth Circuit, State of Louisiana, writs denied, affirming the judgment of the trial court, the School Board requested an agreement from the petitioner owner to file the Joint Stipulation & Agreement to Release Certain Property from Further Litigation. The purpose of the School Board's request was to make it possible for the School Board to immediately begin construction of the school buildings which are desperately needed. This stipulation, in no way, refers to the total amount of land needed for the schools' purposes, and neither was it so intended.

The parties simply stipulated that the approximately nineteen (19) acres referred to on the blackline print, which was annexed to the stipulation, would be eliminated from further litigation.

Petitioner erroneously contends that the said stipulation clearly establishes that there has been a complete abandonment by the School Board of its public project as originally conceived and presented to the Trial Court. Such is definitely not the case. To be sure, the antithesis is true. As provided in the joint stipulation, the very purpose thereof was to allow the immediate start of construction.

The whole idea of the joint stipulation was that both parties knew that the School Board had the right of eminent domain and that, at the very least, the Courts would maintain the Board's right with respect

to that part of the property which was referred to in the stipulation. The parties agree that that much land was needed immediately to begin construction of the buildings only. How much more land that is needed for other school purposes, such as yard area, etc., and the amount of money that was to be paid for it by the School Board is what was supposed to be argued in petitioner's application for rehearing on appeal.

Petitioner refers to the change in the design of the school buildings as though the said change was a critical point in his case. That position is untenable and is not worthy of serious consideration. The only purpose of the School Board in expropriating the amount of land that it did, was to establish high school facilities thereon, because those facilities were needed. Under the contract which was let to Bartley, Inc. those needs will be only partially satisfied.

The dual school concept has not at all been abandoned. In fact, the blackline print substantiates that future construction is contemplated. The only change was one of design of the buildings. One hundred and twenty classrooms are planned.

As stated in petitioner's petition and application for a rehearing to the Court of Appeals, Mr. Bertucci testified at the trial that a single story, two school concept was planned and would be paid for with money already allocated for a school on the front half of the condemned acreage. As a matter of fact, a single story, two school concept is presently being constructed and the money therefor is already allocated for the proj-

ect. Moreover, the ultimate completion of the dual school concept is still contingent upon the School Board's acquisition of additional funds.

The School Board's plans are not based on some vague and hazy plan to build in the unforeseeably distant future. Petitioner admits, in the very outset of his argument, that respondent is in need of the additional schools to meet the educational needs of Jefferson Parish.

Insofar as this case is concerned, the design of the school buildings are of no consequence. The only issues to be decided herein are, as stated in the Court of Appeal original opinion, 1) whether or not more land is being sought by the School Board than is required to be expropriated, and 2) whether the School Board has offered just compensation for the value of the land taken. Nothing has changed to effect either of those issues.

Referring to petitioner's petition for a writ of certiorari, it appears therefrom that petitioner has failed to ask for reconsideration of quantum. Thus, the only issue to be considered is whether the School Board wrongfully expropriated more land than was immediately required. The facts and the jurisprudence made it abundantly clear that the School Board needs all of the land which it has expropriated herein.

Petitioner now contends that it was deprived of constitutional due process of law. That was never an issue in the trial court, nor was it argued in its original appeal. There were four specifications of error and five

principles of law that are stated in petitioner's original brief. Not one of those items referred to a constitutional issue.

Further, it was stated in the Court of Appeal original opinion, that it was stipulated that "the defendant waived all exceptions filed and all defenses save that plaintiff has not offered just compensation to the defendant . . . and that plaintiff seeks to expropriate more land than is necessary for its purposes."

CONCLUSION

The Jefferson Parish School Board sincerely submits that it is in need of every bit of the land that was expropriated. As a matter of fact, it is in need of much more land than that which is in question. It submits that it has not abandoned its dual school concept and that it still plans to effect such construction. But, even if it would be conceded, in arguendo only, that the dual school concept had been abandoned, respondent would still have been within its rights to expropriate the amount of land in question. The 32.96 acres is actually needed for the facility which is now under construction. That facility will have approximately 1600 senior high school students. As stated on trial, and acknowledged on appeal, the recommended area for the site of a senior high school is a minimum of 30 acres plus an additional acre for each 100 pupils predicated on an ultimate maximum enrollment. The trial Court praised respondent for its forethought and planning, and the Appeal Court concurred.

Accordingly, respondent respectfully urges this Honorable Court to deny petitioner's application for a writ of certiorari.

Metairie, Louisiana, this 7th day of December, 1972.

Respectfully submitted,

WALLACE C. LeBRUN
1100 North Causeway Boulevard
Metairie, Louisiana 70004

ATTORNEY FOR
RESPONDENT

CERTIFICATE OF SERVICE

I, the undersigned member of the bar of this Court, do hereby certify that I have served three copies of the foregoing Opposition to Petition for Writ of Certiorari upon George B. Matthews, Attorney for petitioner, by mailing same to him, postage prepaid, at 1800 National Bank of Commerce Building, New Orleans, Louisiana, 70112.

December 7, 1972.

Wallace C. LeBrun